

analysis regarding the cost of providing local service.<sup>45</sup> MFS also said that MFS has: 1) made no analysis of its business risk or competitive pressures; 2) concluded that there is no functional difference between the services or functions necessary to complete local and toll calls; and 3) concluded that MFS' local loops will be shorter than the average loop length for an incumbent carrier.<sup>46</sup>

Thus, in contrast with the *MFS Petition*, where MFS pretends to know what the cost would be of providing a competitive network, MFS acknowledges in Pennsylvania it does not know. Rather than making burdensome capital commitments and assuming the attendant risks -- as other parties are doing -- MFS asks the FCC to intervene. In fact, rather than even calculating the cost, MFS asserts -- in the teeth of a mass of facts to the contrary -- that today as in 1983 an entrant has no way of providing local service independently of LEC-provided facilities.

MFS (at 6) insists there is no alternative to the local loop because the "incumbent LEC ... has unique possession of such a link." The only proposition proven by the *MFS Petition* is that -- unlike many other parties -- MFS does not wish to expend capital for the development of its own network even to reach its targeted end users. No basis for invoking the "essential facilities" doctrine is established by the choice of investment strategy decided on by MFS.

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<sup>45</sup> MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002, Office of Consumer Advocate Request at 15 and 16 (October 26, 1994).

<sup>46</sup> MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002, Bell Data Request at 3.5, 3.48, 3.49 (January 17, 1995).

**In conclusion:** That the "essential facilities" doctrine is not involved here is further demonstrated by MFS' own statements and testimony.

**D. Private lines available today and the "unbundled" local dialtone service loops desired by MFS have the same functionality and provisioning characteristics.**

MFS claims (at 9-12) that private line services cannot be used as a substitute for unbundled local loops because they are "technically and functionally distinct." This is a false claim. As shown *infra*, local private line service set out in LEC tariffs and the local loop that MFS would have "unbundled" from local residential or business dialtone service are not technically and functionally distinct because: (i) they would have the same ordering interval; (ii) they would have the same technical and functional performance; and (iii) network reliability and security require the same testing and monitoring requirements.

**1. Since installation activities would be identical in the case of a private line and in the case of an "unbundled" local loop, the installation interval would be the same.**

MFS insists (at 10-11 and n. 12) that private line services typically involve a much longer provisioning interval because of "the fact that installation of a private line entails a disconnect and new installation rather than a cross-connect at the central office, as would be the case with an unbundled loop." MFS here completely mis-states the facts.

It must be stressed that the comparison is not with residential service. It is between two equivalent services, private line service as currently tariffed and the "local loop" MFS seeks to have "unbundled." If a customer is new to an area, there is no disconnect activity. If a customer is changing service providers, there would be both a disconnect and an installation activity **for either type of service**. Further, insofar as

central office activities are concerned, installation associated with cross-connecting either a local private line or an "unbundled" local dialtone service loop to an interconnector's central office cross-connect would be identical. Assuming that MFS were to order an untreated local private line that had the same functional transmission capability as an "unbundled" local dialtone service loop, there would be no difference in installation activities inside or outside the central office.<sup>47</sup>

Indeed, it is more than likely that an exchange carrier would use the exact same local loop when a customer disconnects from the LEC's local dialtone service in favor of an MFS offering based on an untreated local private line loop. In such a case, the only disconnect and installation activity would take place within the central office. The same activity would be involved for a private line and for a "local loop." There is no reason why there would be any difference in installation interval.

**In summary:** The same installation interval would apply to private lines tariffed today and the "unbundled" local dialtone service loops sought by MFS.

**2. The "unbundled" loops demanded by MFS would have the same technical and functional performance as private lines now available under tariff.**

MFS (at 11) claims that private lines provide "unwanted and unneeded features, such as greater performance levels." The fact is GTE and other exchange carriers already offer untreated voice grade local private line service that has a technical

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<sup>47</sup> This activity typically would consist of connecting the service drop to the distribution cable facility, and possibly cross-connecting the distribution cable facility to a feeder cable or electronic pair gain facility.

performance level that is equivalent to the "unbundled" dialtone loop MFS wishes to use for residential or business dialtone service.

For example, GTE Florida offers a "Two-Wire Voiceband Facility" that is "unconditioned" and is "capable of transmitting voice or data signals within the frequency spectrum of approximately 300 Hz to 3000 Hz."<sup>48</sup> Additional supplemental features may be added if the customer desires "to enhance the operational capabilities" of the loop. GTE California offers a similar "Two-Wire Voice Grade, Non-Data, Without Signaling" private line offering that is conditioned for "voice transmission only."<sup>49</sup> These intrastate offerings are comparable to that offered in GTE's interstate access tariff.<sup>50</sup>

**In summary:** GTE and other exchange carriers offer untreated private line under tariff, *i.e.*, private lines having no greater performance levels than the "unbundled" local loop sought by MFS.

**3. The "unbundled" loops demanded by MFS would require the same testing and monitoring by the exchange carrier as private lines now available under tariff.**

MFS states (at 11) that private line prices include charges for unwanted "line testing and monitoring functions" which would be unnecessary since a "competitor's central office switch would be capable of performing the testing and channel performance functions" on "unbundled" local loops.

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<sup>48</sup> GTE Florida, Incorporated, General Services Tariff, Section A25.3.4.b.(1).

<sup>49</sup> General Telephone Company of California, Facilities for Intrastate Access, Schedule Cal. P.U.C. No. C-1, Section III.C.2.a.

<sup>50</sup> GTE Telephone Operating Companies, Tariff FCC No. 1, Facilities for Interstate Access, Section 5.2.1(A).

Here MFS is factually wrong. MFS is entitled to perform its own monitoring and testing. However, to properly discharge its obligation to all of its customers, the exchange carrier must perform testing and monitoring of "unbundled" dialtone loop service.

MFS' proposal would impose an artificial fragmentation of the interrelated network testing/customer testing and repair functions; and would compel the exchange carrier to rely upon an outside supplier (that is also a competitor) for crucial information -- even though the exchange carrier has no control over the quality or responsiveness of that supplier. This could interfere with efficient operation of the network and damage the perceptions of the exchange carrier's performance by other customers.

If there were only testing by the customer, the LEC would be unable to perform its proper role in assuring operation of the entire network within planned parameters, would be unable to respond efficiently to trouble calls, would be unable to demonstrate the validity of its billings whenever customers demand outage credits. Eliminating LEC testing and relying entirely on customer testing would mean divorcing responsibility from control. It would not be a sound operational or technical step, and would not be acceptable in terms of reliable operation of the network. Indeed, such a measure would be likely to impose costs on the network rather than generate any actual savings that might be passed on a customer providing its own testing.

MFS (at 42) urges the Commission to "define acceptable intervals for ... maintenance" of unbundled loops provided by an exchange carrier to a competitor. Thus, MFS would have the FCC remove any discretion from LECs in managing this aspect of their network and satisfying customer demand. But then, MFS (at 11) also

seeks to force the exchange carrier to rely upon its customer/competitor for the crucial inputs (testing and monitoring information) necessary for responsive maintenance.

MFS cannot have it both ways. MFS has previously stated that a network owner's ability to perform monitoring and control functions is "absolutely fundamental to the ability to operate that network as efficiently and reliably as possible."<sup>51</sup> And, the Commission has agreed that "monitoring and control is critical" to permit a firm to maintain quality standards because it allows the firm "to detect and correct service problems."<sup>52</sup> MFS' newest claim that the exchange carrier must rely upon monitoring and testing performed by MFS is in direct violation of principles argued by MFS and adopted by the Commission.

It is a given that customers have come to expect that dialtone will always be present and that repair activities will be completed very promptly. Differentiation in service levels will be one of the factors that will influence the customer's choice of a local service provider. Repair activities involving outside plant cables and electronic devices is a complicated process that typically involves close communication and coordination between the field technician and the technician performing the testing from a remote location.

Poor performance or an out-of-service condition associated with a local loop is often the result of a combination of several small problems, occurring at different

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<sup>51</sup> *D.91-141*, Comments of Metropolitan Fiber Systems, Inc., August 6, 1991, at 61-62.

<sup>52</sup> *D. 91-141 Report and Order*, 7 FCC Rcd at 7394. "The Commission has previously recognized the importance of monitoring and control in the context of ONA...." *Id.*

locations, that may appear insignificant on a stand-alone basis, but when taken in combination might result in unacceptable performance. Effective testing is interrelated with the repair function that will be in any case performed by the LEC. Repair is not a simple matter of one technician telling another to go to an exact location and repair "Condition X." Testing systems do not provide that level of detailed information. They provide an indication of where a particular type of trouble may be located, but it is the expertise of the field technician that ultimately determines the speed and accuracy of the repair.

In any case, a system separate from that used for local dialtone service would be required for testing and monitoring "unbundled" dialtone loop service. This need occurs, as MFS (at 11) points out, because the loop associated with a customer served from an MFS switch could not be tested by the system normally used by the exchange carrier. Instead, a system used for testing private line services must be employed so that it is possible to isolate (temporarily disconnect) the exchange carrier loop from the transport link to the CAP switch so that performance measurements can be made.<sup>53</sup> Thus, there would be no difference in the need for testing and monitoring, or the manner in which it is performed, between private lines and "unbundled" local dialtone loops.

Finally, it should be emphasized that, under MFS' proposal, the "customer" that would be given the right to replace LEC testing and monitoring with its own would not be limited to parties at MFS' level of technical competence and integrity. Both

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<sup>53</sup> Testing is performed by disconnecting or isolating the local loop portion of a circuit from the transport portion of a circuit and "reading" the condition of the loop.

regulators and the industry – not to speak of abused consumers – are going through nightmares of "slamming" and 900 service abuse, and at the center of the abuses are supposedly legitimate and competent carriers. Complaints have flooded the FCC and all the state commissions, trying the patience of legislators and the public. Absent the most solid showing that similar problems will not arise, the Commission should not even consider turning over to unspecified entities crucial system responsibilities like testing and monitoring.

**In summary:** Sound system operation requires that the exchange carrier retain the ability to test both "unbundled" dialtone local loops and private lines.

**E. Contrary to MFS' argument, the burden of taxes and of fees for use of public rights-of-way falls more heavily on LECs than on other parties.**

MFS claims (at 8) that it is not feasible to construct a competing network because, in addition to the capital costs, an entrant "would face huge obstacles by way of permitting, franchising, rights-of-way, and building access impediments." And yet this allegedly impossible situation has not prevented MFS from obtaining use of rights-of-way "in over three dozen metropolitan areas," allowing MFS to provide "a full range of dedicated special access and private line transmission services."<sup>54</sup> Appendix 1 of the *MFS Petition* elaborates on the theme of the so-called impossible situation MFS faces, claiming that "[c]ommunities often attempt to extort exorbitant gross revenue-based

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<sup>54</sup> *MFS Petition* at 3. Firms that have obtained rights-of-way for ubiquitous distribution systems include cable television firms, power companies, and water companies. Such firms are using these rights-of-way to construct their own telecommunications network, or are providing the use of the right-of-way to such firms as MFS.

franchise fees" and that "these exorbitant `franchise fees' ... are not incurred by the incumbent LEC."

MFS is proposing to do business at the local exchange level. The company does not assert that is precluded from obtaining requisite authorizations. It is complaining because it must deal with political bodies at all levels, with tax impositions and franchise fees, and so forth.<sup>55</sup> By no means are LECs immune to this process; they have engaged in it for many years. The fact is utilities are frequently expected to provide financial support for local communities.

Stated in the *MFS Petition* but never supported is the notion that exchange carriers escape these costs and obstacles, or at least bear much lower costs. In fact, LECs must grapple with these very same difficulties, and these costs typically fall more heavily on LECs because the exchange carrier obligation to serve covers far more ground than the customer sets MFS chooses to serve.

LECs are required to provide compensation to communities for the right to do business and for use of public rights-of-way. The structure of these fees varies by community, but it is very often a percentage of revenues.<sup>56</sup> In GTE's service areas,

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<sup>55</sup> MFS recognizes that it has the same opportunities in this area as the LECs even though it complains that it has to negotiate on an individual case basis just as the LECs do. MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002, Rebuttal Testimony of Gary J. Ball at 43.

<sup>56</sup> In 1990, exchange carriers paid an average of 1.8 percent of gross operating revenues as gross receipts taxes. States that do not use gross receipt taxes have other, more generally applicable taxes, such as sales tax or corporate income. See "State and Local Tax Policy and the Telecommunications Industry" (*"Tax Policy Paper"*), Case, Karl. E., The Commission to Study the Ohio Economy and Tax Structure, November, 1994, at 12.

hundreds of communities impose fees and taxes. Annually, GTE pays in excess of one hundred million dollars in the form of state or local franchise, business license, and excise or gross receipt taxes aimed specifically at local exchange carriers.<sup>57</sup>

With respect to fees and taxes, GTE believes MFS has the facts exactly backwards, that exchange carriers face a higher cost of doing business than MFS. There are many costs that fall only on LECs. In many states, only exchange carriers are subject to a variety of taxes and fees, such as centrally-assessed property taxes, higher assessment levels, and special sales taxes.<sup>58</sup>

GTE agrees with MFS on the need for equal taxation for all telecommunications firms that compete to provide local service. By all means the Commission should actively encourage state and local agencies to eliminate any taxation differential that now exists between telecommunications firms.<sup>59</sup> It is also vital to equalize tax treatment between telecommunications firms and other firms, for "[n]o good economic logic now justifies singling out telecommunications firms for special taxation."<sup>60</sup> This action could serve to spur investment in an advanced infrastructure:

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<sup>57</sup> In addition, multitenant buildings have in recent years sought substantial fees -- from LECs as well as others -- to permit access to their tenants. For example, GTE Florida Incorporated has had to negotiate entrance facilities to multitenant buildings for years.

<sup>58</sup> In 1990, these combined taxation methods equaled a total of 9.1 percent of gross revenues for GTE and the BOCs. *Tax Policy Paper* at Table 1.

<sup>59</sup> This is an especially important issue since most of the largest IXCs have announced their intention to offer local services. IXCs are on average taxed at less than half of the effective rate applied to exchange carriers. Compare, *Tax Policy Paper* at Tables 1 and 2.

<sup>60</sup> *Tax Policy Paper* at 33.

[D]ifferential taxes on telecommunications firms are not neutral with respect to economic choices; they distort both consumption and investment decisions, leading to misallocation of society's valuable resources.<sup>61</sup>

**In summary:** Contrary to MFS' argument, the total burden of taxes, and fees for use of public rights-of-way, falls more heavily on LECs than on other parties.

## **II. THE FCC SHOULD NOT ACCEPT MFS PROPOSALS THAT MERELY CREATE AN UNFAIR ADVANTAGE FOR MFS.**

- A. Rather than MFS' proposal for pricing the interstate common line elements, which should be rejected because it violates FCC policy on charging costs to the cost causer and because it is not competitively neutral, the Commission should follow the suggestion of its own staff.**

The *MFS Petition* (at 43-44) proposes that LECs "be permitted to collect the EUCL [End User Common Line] charge from entities purchasing unbundled common lines, in lieu of collecting these charges from the ultimate end user (with whom the LEC may not have any business relationship in a competitive environment)." While this proposal would be entirely consistent with recent Commission action in granting Part 69 waivers to Rochester Telephone Corporation,<sup>62</sup> MFS (at 43) also recommends that exchange carriers not be allowed to assess CCL charges with respect to minutes of use originating or terminating on unbundled common lines since it would be impossible for the LEC to measure minutes transiting the new competitor's switch.

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<sup>61</sup> *Tax Policy Paper* at 37.

<sup>62</sup> Rochester Telephone Corporation, Petition for Waivers to Implement Its Open Market Plan, Order, FCC 95-96 (released March 7, 1995).

Further, MFS opposes (at 43-44) the use of any charge intended as a surrogate for the CCL charges since MFS claims it would be impossible to design a charge that would not lead to over-recovery by the exchange carrier. MFS insists (at 44) a surrogate charge would be unnecessary since LECs simply could compute the new CCL rate for each tariff period using only the LEC-measured minutes of use that are switched by exchange carrier switches and thereby achieve the correct level of recovery.

MFS' proposal is deficient on many levels. It would not allow cost recovery from the cost causer, but rather would result in customers choosing service from MFS being subsidized by the customers remaining with the exchange carrier. This situation would be further exacerbated by the inevitable targeting by MFS of customers with high usage levels.<sup>63</sup> Then, since only six percent of GTE's customers account for 42 percent of interstate switched access minutes, the loss of those customers to a non-LEC local and interstate access service would result in a substantial impact on the CCL price for remaining exchange carrier customers. This would occur because the numerator (the revenues to be recovered) would remain relatively unchanged, while the denominator (the chargeable minutes) would become much smaller.

GTE proposes a far simpler solution. The entire amount of revenues needed for recovery of the interstate common line element should be recovered on a flat per-line basis from either the end user, or from the alternate provider that uses the "unbundled"

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<sup>63</sup> Nowhere in its petition does MFS offer to provide local service ubiquitously in any service area – which is required in all exchange carrier service areas. As noted *supra*, in Pennsylvania, MFS has stated that it intends to serve the business community only.

dialtone loops.<sup>64</sup> For example, an average flat per-month charge on each GTE loop of about \$7.25 would allow complete elimination of GTE's CCL charge.<sup>65</sup> This would match revenues with costs and avoid endless arguments over the appropriateness of any surrogate that might be developed. This GTE proposal also is entirely consistent with the Commission staff's own thoughts expressed in a 1993 paper:

Efficient cost recovery, therefore, would require that subscribers pay for the loop facilities through nontraffic-sensitive charges, i.e., flat monthly charges that are unaffected by whether or not the subscribers actually make or receive interstate calls.<sup>66</sup>

It is also significant that, if MFS were to use private line loops, there would be complete recovery of loop costs from the user.

**In summary:** MFS' proposal for pricing the interstate common line elements should be rejected because it violates FCC policy on charging costs to the cost causer and because it is not competitively neutral. GTE recommends that the Commission should follow the suggestion of its own staff.

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<sup>64</sup> Under current Commission rules, the flat rate per-month EUCL is capped at \$3.50 for residence customers and \$6.00 for business customers. The remaining interstate common line revenues are generated from the per-minute CCL charge. See, 47 C.F.R. Sections 61.45(c), 61.46(d) and 69.203

<sup>65</sup> This figure is cited for illustration only. GTE does not suggest an across-the-board increase in all end user charges. As local rates approach market levels, a more flexible system of interstate end user charges will be needed to ensure that the end user charge does not result in a total rate for local service -- the sum of the local rate and the end user charge -- that exceeds the market rate. This outcome is most likely in areas where costs are low, in applications where a large number of loops are provided to a single location, or in connection with new, broadband services.

<sup>66</sup> *Federal Perspectives on Access Charge Reform, A Staff Analysis*, April 30, 1993 ("Staff Analysis") at 60.

**B. The voluntary pricing standards proposed by MFS should be rejected because they are unnecessary, flawed, and would create an unfair competitive advantage for MFS.**

MFS urges (at 33) the Commission to adopt "voluntary standards for pricing" of unbundled loops. MFS (at 45-46) further proposes that such pricing standards be based on "the direct economic cost of a given facility" so that when a competitor leases a loop "an incumbent LEC would be allowed to recover no less than the full cost it would otherwise have avoided had it not built the increment of plant." The MFS proposals are seriously flawed and must be rejected for several reasons.

First, new rules are not necessary. The price of the currently available interstate special access loop has already been determined under the Commission's current rules. MFS has not suggested that this price is in any way unreasonable. As for new services, the Commission has an existing methodology based on a lengthy record that determines how Tier 1 (Price Cap) LECs<sup>67</sup> establish prices for new services.<sup>68</sup> Exchange carriers are required to use engineering cost models to determine all of the relevant economic costs of a service. As for the interstate portion of common lines, the Commission has long recognized that the assignment of common line cost to interstate is inherently arbitrary. The cost studies MFS suggests will not change this fact. The

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<sup>67</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) ("*D. 87-313 Second Report*"), and Erratum, 5 FCC Rcd 7664 (1990), *modified on recon.*, 6 FCC Rcd 2637 (1991), *aff'd. sub nom.* National Rural Telecom Association, 988 F.2d 174 (D.C. Cir. 1993).

<sup>68</sup> *D. 87-313 Second Report*, 5 FCC Rcd at 6824-6825.

most reasonable course for the Commission to follow is to develop a more efficient recovery mechanism for these costs, through a system of end-user charges.<sup>69</sup>

Second, it is clear that MFS is seeking a competitive advantage by proposing (at 45) that the price for "unbundled" dialtone loops be capped at a level equal to a future cost that has not been incurred, *i.e.*, the Total Service Long Run Incremental Cost ("TSLRIC").<sup>70</sup> However, MFS clearly intends that exchange carriers use existing facilities to provide loops to MFS,<sup>71</sup> rather than building a completely new loop when MFS places an order for service.<sup>72</sup> This means that MFS wants the calculated TSLRIC to be used as a maximum price based on the most cost-effective future technologies;

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<sup>69</sup> MFS asks (at 46) the Commission to "establish appropriate cost allocation and separations rules that can be incorporated into the cost studies." When the end product of a cost study is intended for use in setting prices in a competitive environment, there can be no possible justification for using any form of a Fully Distributed Cost allocation method or allocating costs based on separations categories.

<sup>70</sup> Long Run Incremental Cost ("LRIC") is useful in establishing a price floor. However, if economies of scale or scope are present, as they are in telecommunications, a firm must price, on average, above LRIC to recover other overhead and operating costs. Thus, prices cannot simply be set equal to incremental cost. TSLRIC, which economists refer to as Average Incremental Cost ("AIC"), is not useful as a price floor, since it includes some costs which are not related to volume, and would therefore set the floor at an unreasonably high level. Neither is TSLRIC useful in determining price level, since it does not include many costs which the firm must recover. TSLRIC is equal to the price floor only in the special case where all units of the service are sold at a uniform price -- a condition which clearly does not exist in the market for local loops.

<sup>71</sup> *See, for example, MFS Petition* at 39, which says: "the required equipment may already be installed" and "traditional wire pairs or double-ended pair gain devices may be available to provision a competitive local exchange carrier's service."

<sup>72</sup> Even relying on future construction generally would not result in an entirely new local loop. Typically distribution plant is placed at the time a new building or development is constructed, and the existing feeder facilities are augmented periodically as a threshold of exhaustion is reached.

but at the same time MFS expects immediate service using existing facilities that include a mixture of network architectures and ages of plant. The prices charged by exchange carriers for all services, including "unbundled" dialtone loops, must recover the total costs of what in fact exists, a mixture of network architectures and ages of plant.

Third, the determination of TSLRIC for "unbundled" dialtone loops cannot rely entirely on the LEC's existing loop provisioning methods and associated costs. MFS demonstrates very clearly (at 39-42) that additional equipment would be necessary to accommodate interconnection of "unbundled" dialtone loops to a new local service provider.<sup>73</sup> This additional equipment that is not needed to provide local service to exchange carrier customers must be included in any cost analysis.

Fourth, an "unbundled" dialtone loop price capped at TSLRIC also would ignore a large portion of the other costs a LEC incurs as a part of doing business. The price for a local loop must, in addition to TSLRIC, recover a fair proportion of the common and overhead costs of the firm. The MFS proposal is no different than arguments already made and rejected in the *Expanded Interconnection* proceeding.

[I]t would not be reasonable to require the LECs to base their connection charges only on the direct costs of these services, with no loadings for overhead costs. Direct-cost-based pricing of connection charges, which would make these charges one of the few, if any, LEC offerings not recovering overheads, would either require all other LEC services to recover a proportionally greater share of such costs or require the LECs to forgo revenues. Moreover, the low charges for interconnection with LEC facilities resulting from this approach would give interconnectors

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<sup>73</sup> See discussion in ATTACHMENT 1.

false economic signals that could stimulate uneconomic entry into the access market.<sup>74</sup>

Fifth, MFS (at 46) suggests that the Commission "define a relevant increment of loop plant, based on density and length per wire center, on a per loop basis" for use in unbundled loop cost studies. MFS plainly seeks to obtain a minimal price for "unbundled" dialtone loop service in high density, short loop length locations. While GTE does not object in principle to deaveraging of prices for local services,<sup>75</sup> the offering of "unbundled" dialtone loops at deaveraged prices must be accompanied by deaveraging the prices for local dialtone service, as well as the removal of mechanisms used to hold down the price of local service – especially the practice of averaging prices across a broad service area consisting of many wire centers.

Similarly, unbundled loop prices should only be established for "distance bands" within a wire center if the LEC is free to establish equivalent bands for its own local service rates. Failure to include this requirement would not be competitively neutral since it would allow MFS to primarily target the short loop length, high volume

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<sup>74</sup> *D. 91-141 Report and Order*, 7 FCC Rcd at 7429.

<sup>75</sup> In fact, GTE would very much like to use the same deaveraged pricing arrangements commonly used by CAPs.

customers within a wire center, leaving the longer loop, low volume customers for the exchange carrier to serve.<sup>76</sup>

**In summary:** The Commission should reject the voluntary pricing standards proposed by MFS because they are unnecessary, flawed, and would create an unfair competitive advantage for MFS.

**C. The inverse imputation standard proposed by MFS is also flawed and must be rejected.**

MFS (at 46-50) suggests that an alternative to its so-called cost-based pricing proposal would be adoption of an inverse imputation standard.<sup>77</sup> This test would ensure that MFS would not pay the full cost the exchange carrier incurs to furnish "unbundled" local dialtone loops.

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<sup>76</sup> As GTE has explained in its comments on universal service, resale of local service can only be made consistent with universal service through careful design of a universal service mechanism. First, universal service funding must be made explicit, so that LEC rates do not provide implicit support for unbundled services sold to MFS. Second, funding for COLR obligations should only be provided to carriers that undertake those obligations. Third, the distribution of COLR funding should be carefully coordinated with policy toward the pricing of services for resale. If the underlying carrier sells an unbundled service at a controlled price, then that carrier should receive any COLR funding associated with serving that end user. If the underlying carrier is allowed to sell unbundled service at a market price, the reseller should receive any COLR funding. *See D. 80-286*, GTE's Reply Comments, December 2, 1994, at 26-43.

<sup>77</sup> MFS apparently uses the term inverse imputation to describe a price ceiling. The term imputation is more commonly used to describe a price floor. The problem MFS seeks to correct is not in the price of the unbundled service, but in the price of the local service "bundle" itself. "Inverse imputation" would simply extend the distortion in local service pricing into the price of the "unbundled" dialtone service loop. By so doing, it would extend the implicit support provided by the LEC's own rates for other services to MFS' local service offerings. GTE does not object to providing MFS funding for COLR obligations it may undertake, if this is done on an explicit basis, and is provided symmetrically to all carriers who undertake the same obligation in an area. GTE strenuously objects, however, to providing funding to MFS if it does not undertake COLR obligations.

**1. The MFS Imputation proposal ignores costs created by "unbundling" local loops.**

MFS proposes (*id.*) that the sum of the prices of unbundled local service elements should equal the current price for local dialtone service. This ignores the incontrovertible facts that: (i) the sum of the costs of the unbundled local service components will always be somewhat higher than the cost of the integrated service; and (ii) interconnection itself will introduce inefficiency and require additional equipment, leading to higher costs. This is demonstrated in ATTACHMENT 1.

Indeed, the *MFS Petition* itself proves that there are additional costs that must be recovered, regardless of whether new equipment must be installed or existing equipment may be used. These additional costs are not reflected in the proposed imputation formulas.

**2. Using the current price of local service as an upper bound on the price of unbundled service would create a direct subsidy for MFS.**

MFS proposes that the current price of local service be used as an upper bound on the price for unbundled local loops. This would result in a direct subsidy for MFS customers at the expense of GTE customers.

GTE does not have the freedom to establish the price for local service that the MFS formula would suggest, nor do local service prices always recover all relevant costs. Rather, prices for local services are typically held to artificially low levels by a host of support mechanisms. Using MFS' formula, GTE customers in low cost areas would contribute to MFS' success by paying a higher average price used to support higher cost areas.

**3. MFS links a lengthy list of caveats, some of which are controllable by MFS, to an offer to pay an already below-cost price.**

MFS attaches (at 46-47 and n. 30-33) a lengthy list of caveats to its offer to pay the partial cost of each local loop. MFS proposes that if it cannot access "the full array of revenue opportunities," or offer the "full range of local exchange access services," or contest the "whole of any relevant market," or pay no more than the partial cost of "complementary essential bottleneck feature, facility or service element necessary to provide competitive local exchange service," then the Commission should "require the pricing of unbundled loops at the lesser of TSLRIC or a rate to be determined using an inverse imputation standard." These caveats would make payment of prices based on the LECs' costs depend on matters outside the control of the exchange carrier and on some points within the control of MFS. Again, MFS demands a free ride.

Action by state regulatory agencies that might limit one service provider's territory or allowable services are beyond the control of the LEC and outside the purview of this Commission, and in any event has no relevance to the issue of cost recovery for use of an "unbundled" dialtone loop. In fact, whether MFS chooses to offer many of the services on its list is totally under the control of MFS; under no logic ever recognized in regulation would it be a precondition to full cost recovery of the exchange carrier. This attempt by MFS to constrain its rivals using preconditions controlled by MFS would manipulate the regulatory process in a patently anti-competitive manner.

**In summary:** The Commission should reject the inverse imputation standard proposed by MFS.

**D. The alternative price cap regulations and the "additional pricing flexibility" suggested by MFS would provide a regulatory guaranty of success for MFS rather than LEC flexibility.**

MFS (at 48-50) proposes that, if its "guidelines are approved by state regulators and implemented in LEC tariffs," then exchange carriers "should become subject to an alternative form of price cap regulation for the common line element." Specifically, MFS proposes that LECs would be exempt from the price cap adjustment formula for the common line basket, the maximum carrier common line charge, and the cap on the EUCL charge.<sup>78</sup> MFS proposes that instead a "combined interstate and intrastate" basket be created for both access and local service.

This entire proposal provides to exchange carriers no increased ability to compete. Allowing adjustments to a CCL charge that exchange carriers may not bill to the user of an "unbundled" dialtone loop<sup>79</sup> simply adjusts the mathematics of charges to customers choosing to remain with the exchange carrier, customers that would be required to subsidize MFS' customers. Similarly, minor adjustments to the EUCL charge without an allowance for full interstate common line recovery from the EUCL charge are meaningless. In contrast, adoption of GTE's recommendation for full interstate common line recovery from the EUCL charge would provide a rational and economically sound approach to common line recovery.

MFS (at 49-50) also proposes that the "alternative form of price cap regulation for LECs complying with the guidelines should also include enhanced pricing flexibility

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<sup>78</sup> 47 C.F.R. Sections 61.45(c), 61.46(d) and 69.203, respectively.

<sup>79</sup> See MFS Petition's proposal at 43-44.

for LECs." However, MFS' *D. 91-141* Comments<sup>80</sup> placed conditions on MFS' proposal for a demonstration of "the existence of actual competition within a study area." The net effect of these conditions would be that LECs would be allowed to lower prices an unspecified amount **several years after MFS had entered a market.**<sup>81</sup> Again, MFS' offer of "enhanced pricing flexibility" amounts to nothing more than regulatory action assuring success for MFS.

In contrast, GTE's *D. 94-1* submissions proposed a carefully crafted system for adjusting the degree of regulation in interstate access markets according to the degree of competition in each market. This proposal would define relevant markets for interstate access, establish criteria for assessing competition in those markets, and provide the appropriate regulation in each market, based on those criteria. Reform of access regulation should be based on access competition, not on conditions in other markets. Access reform should be designed to enhance the performance of access markets, for the benefit of consumers who use interstate access. It should not be used as a lever to influence policy actions by other regulators in other markets.

**In summary:** MFS' suggested alternative price cap regulations and pricing flexibility would amount to a regulatory guaranty of success for MFS rather than LEC flexibility.

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<sup>80</sup> *D. 94-1*, Comments of MFS Communications Company, Inc., May 9, 1994, at 45-50.

<sup>81</sup> *Id.* MFS proposed that state regulatory agencies establish conditions to determine when a LEC study area is "open to competition" and then delay for two years until exchange carriers would be allowed to lower prices in the most urban exchanges.

**III. RATHER THAN INITIATING THE NARROWLY FOCUSED PROCEEDING RECOMMENDED BY MFS, THE COMMISSION SHOULD ACT PROMPTLY IN EXISTING PROCEEDINGS TO ADDRESS THE IMPACT OF LOCAL SERVICE AND ACCESS COMPETITION ON BOTH THE INTERSTATE AND INTRASTATE JURISDICTIONS.**

**A. The Commission should reject MFS' proposal for a limited rulemaking and should begin a cooperative effort with state regulators to establish symmetric regulations for all competitors.**

It is clear that the Commission intends to rely on a competitive market model to encourage efficient provision of telecommunications services and the construction of a modern, feature-rich network. In order to "set fair rules of real competition",<sup>82</sup> Commission action in cooperation with state regulators is past due. Already fifteen states either have authorized competition for local exchange service or have an open proceeding to address, or otherwise establish, ground rules for local competition. An additional twelve states have passed this year, or are in the process of considering, competitive telecommunications legislation in the current legislative session.<sup>83</sup> The Commission must no longer delay reform.

Initiation of a narrow rulemaking along the lines suggested by MFS would not be productive, for all the reasons discussed *supra*. Conspicuously absent from MFS' recommendations are any steps that would remove the regulatory restraints that today prevent exchange carriers from competing on the basis of their own costs, efficiencies and merits. By contrast, FCC Chairman Hundt recently observed: "Bringing real

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<sup>82</sup> See, Statement of Reed E. Hundt on FY 1996 Budget Estimates, before the Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies, Committee on Appropriations, U.S. House of Representatives, March 22, 1995, at 3 (*emphasis in original*).

<sup>83</sup> See "NCTA Targets Arizona, Missouri for Local Competition," *Telecommunications Reports*, March 20, 1995, at 13-14.

competition to the local exchange will require addressing a variety of complex and intertwined issues."<sup>84</sup>

Thus, instead of initiating a narrow rulemaking, the Commission should complete action in the several rulemaking proceedings where there exists a complete record to serve as a basis for sound policy decisions. A guiding principle should be regulatory symmetry.

The most efficient way to achieve additional consumer benefits is to limit regulatory intervention to the minimum necessary.<sup>85</sup> The additional layers of regulation proposed by MFS not only are unnecessary but also would serve to prevent genuine competition by granting non-LEC local service providers a huge price advantage in the market for local exchange services. As suggested by the *Staff Analysis* (at 35), "[i]f only the LECs are subject to rigid rate structure rules, they will be at a competitive disadvantage in their ability to respond to the market."

Today, exchange carriers are subject to a seemingly endless array of rules and regulatory oversight, while their competitors are unregulated or lightly regulated. In many cases, such competitors have been actively encouraged by explicit regulatory action without a corresponding adjustment to the constraints that prevent exchange

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<sup>84</sup> Remarks of Chairman Reed E. Hundt, before the American Bar Association, Antitrust Section, April 6, 1995 at 4.

<sup>85</sup> "Most economists would agree that the unregulated competitive process is a better method of organizing economic activity than any regulatory scheme devised by man." Schmalensee, Richard, and Taylor, William, Comments on the USTA Pricing Flexibility Proposal, submitted as Attachment 4 to USTA's Comments in *D. 94-1*, May 9, 1994, at 8.

carriers from competing on nearly equal terms. The proposals put forth by MFS, if adopted in whole or in part, would serve to exacerbate this inequity.

Acting in concert with state regulatory agencies, the Commission should begin a wide-ranging examination of all access charge regulations with the goal of eliminating all pricing distortions embedded in the prices charged by exchange carriers as a result of past regulatory actions. As the *Staff Analysis* (at 29) recognizes, "[f]alse economic signals resulting from rates that are not reasonably related to economic costs or that are unreasonably discriminatory among access customers should be eliminated."

**In summary:** The FCC should reject MFS' proposal for a limited rulemaking and begin a cooperative effort with state regulators to establish symmetric regulations for all competitors.

**B. The narrowly focused action demanded by MFS would not address broad underlying problems; it would merely grant a competitive advantage to MFS.**

MFS proposes rules that would guarantee a huge competitive advantage to new local service providers. This would occur because a competitor using "unbundled" dialtone loops priced under MFS' proposed rules<sup>86</sup> would pay only a portion of the current total price for local service -- a price that in many locations already is heavily subsidized by regulatory mechanisms designed to encourage high subscription levels for local exchange service, *i.e.*, universal service. Even if "unbundled" dialtone loops were priced at a fully compensatory level, new local service providers still would be guaranteed success since they would be able to selectively target customer sets using prices free from the distortions caused by universal service regulatory mechanisms.

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<sup>86</sup> MFS *Petition* at 43-50.